

COMMISSION ON STATE MANDATES

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September 1, 2006

Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Draft Staff Analysis and Hearing Date

Request to Amend Parameters and Guidelines

Health Benefits for Survivors of Peace Officers and Firefighters, 05-PGA-06 (97-TC-25)

Labor Code Section 4856, Government Code Section 26135

Statutes 1996, Chapter 1120 (AB 3478); Statutes 1997, Chapter 193 (SB 563)

Department of Finance, Requestor

Dear Ms. Oropeza:

The draft staff analysis for the request to amend the above-named parameters and guidelines is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **September 21, 2006**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This matter is tentatively set for hearing on **October 26, 2006**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact me at (916) 323-8217.

Sincerely,

NANCY PATTON

Assistant Executive Director

Enclosures

ITEM _____

REQUEST TO AMEND PARAMETERS AND GUIDELINES

DRAFT STAFF ANALYSIS

Labor Code Section 4856
Government Code Section 26135

Statutes 1996, Chapter 1120
Statutes 1997, Chapter 193

Health Benefits for Survivors of Peace Officers and Firefighters

05-PGA-06 (97-TC-25)

Department of Finance, Requestor

Executive Summary

The Executive Summary will be provided with the final staff analysis.

Requestor

Department of Finance

Chronology

10/26/00	Commission adopts Statement of Decision
03/29/01	Commission adopts Parameters and Guidelines
09/14/05	Department of Finance requests that parameters and guidelines be amended
08/ /06	Draft staff analysis issued

Summary of the Mandate

The test claim statutes require local governmental agencies to provide lifelong health benefits to the survivors of peace officers and firefighters, as defined in Penal Code section 830, et.seq. Penal Code section 830, et.seq, includes peace officers employed by cities, counties, special districts, school districts, and community college districts. The test claim statutes also deleted language exempting local agencies from collective bargaining under the Meyers-Milias-Brown Act with their employees for survivor health benefits.

On October 26, 2000, the Commission adopted its Statement of Decision¹ that the test claim legislation constitutes a reimbursable state mandated program upon *local governments* within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Providing survivor health benefits for the spouses and children of peace officers and firefighters who are killed in the line of duty protecting the public.
- Collective Bargaining with representatives of employee organizations on providing survivor health benefits.

The California Constitution defines “local governments” to include school districts and community college districts.² Therefore, when the Commission found that the above activities were imposed on *local governments*, the Statement of Decision included school districts and community college districts as eligible claimants.

On March 29, 2001, the Commission adopted parameters and guidelines for this program. The parameters and guidelines clarified that local agencies and school districts, including community college districts were eligible claimants for this program.³

¹ Exhibit A.

² Article XIII B, section 8(d).

³ Exhibit B.

Department of Finance's Proposed Amendments

In previous Commission decisions, based on the Supreme Court's holding in *Kern High School Dist.*, school districts were not entitled to reimbursement for activities required by the state when the activities are triggered by the discretionary local decision to employ peace officers. Based on these past decisions, on September 14, 2005, the Department of Finance requested that the *Health Benefits for Survivors of Peace Officers and Firefighters* program be amended to remove school districts and community college districts as eligible claimants for this program.⁴

Finance states in its request:

Education Code Sections 38000 and 72330 permit K-12 school and community college districts to establish police departments, but do not require it. Therefore, forming a police department is a discretionary activity on the part of these districts, and pursuant to case law and consistent with other Commission decisions regarding school and community college district law enforcement activities, the consequences of participation in a discretionary program cannot be found to be reimbursable.

Therefore, Finance requested that the parameters and guidelines for this mandate be amended to 1) delete school districts and community college districts as eligible claimants; and 2) delete any reimbursable activities associated with school districts and community college districts.

Issue: Does the Commission have jurisdiction to retry this issue once it made its determination that the *Health Benefits for Survivors of Peace Officers and Firefighters* program constituted a state-mandated program for school districts and community college districts, as defined in Penal Code section 830.32?

On October 26, 2001, the Commission determined that the *Health Benefits for Survivors of Peace Officers and Firefighters* program constituted a state-mandated program for local governments that employ peace officers and firefighters, as defined in Penal Code section 830, et.seq. Thus, the Commission has determined, under the test claim decision that school districts and community college districts are eligible claimants for this program.

It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void. (*Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is res judicata, and as conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal*

⁴ Exhibit C.

Commission (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.)

The Commission's Statement of Decision became final when it was mailed or served on October 31, 2000. (Cal. Code Regs, tit. 2, section 1188.2, subd. (b).) Therefore, the Commission does not have jurisdiction to retry or change a finding made in the Statement of Decision.

Conclusion

The Department of Finance's request to remove school districts and community college districts as eligible claimants should be denied because the Commission does not have jurisdiction to retry this issue once it made its determination that Labor Code section 4856 and Government Code section 26135 constituted a state-mandated program for school districts and community college districts identified in Penal Code section 830.32.

Staff Recommendation

For the reasons stated above, staff recommends that Department of Finance's request to amend the parameters and guidelines for the *Health Benefits for Survivors of Peace Officers and Firefighters* program be denied.